

UNITED STATES OF AMERICA
DISTRICT OF MAINE

UNITED STATES OF AMERICA)	
)	
vs.)	Crim. No. 00-26-B-S
)	
GREGORY P. VIOLETTE,)	
)	
Defendant)	

**RECOMMENDED DECISION ON DEFENDANT’S
MOTION TO DISMISS**

The Defendant seeks dismissal of numerous counts (thirty of the ninety counts alleged) of the Superseding Indictment charging wire fraud and mail fraud. Defendant asserts that each of the challenged counts is barred by the five year statute of limitations of 18 U.S.C. § 3282. I now recommend that the Court **DENY** the motion.

Discussion

All of the challenged counts involve a scheme or artifice to defraud by the use of mail or wire. In such cases, if the counts relate to a “financial institution” there is a ten-year statute of limitation, *see* 18 U.S.C. § 3293; in the case of any other alleged victim there is a five-year statute of limitation, *see id.* § 3282. For purposes of this motion, the Government concedes that the shorter limitation is applicable. Nevertheless, even though the scheme began outside the five year limitation, each of the disputed counts also alleges a mailing that occurred within the five year period. Courts have uniformly held that evidence of schemes begun outside the statute of limitation is not barred if there is also evidence of an act of mailing occurring within the five year period. *See, e.g., United States v. Ashdown*, 509 F.2d 793, 797-98 (5th Cir. 1975); *United States v. Andreas*, 458

F.2d 491, 491 (8th Cir. 1972); *United States v. Blosser*, 440 F.2d 697, 699 (10th Cir. 1971). Therefore, as to each of the challenged counts the Government will have the burden of proving that a mailing or other prohibited act that was part of the scheme to defraud occurred within the five-year period in order to establish an essential element of the offense. However, there is no basis for a dismissal of the count at this time.

Defendant in his Reply to the Government's Response to his Motion to Dismiss does not dispute the case law or precedent relied upon by the Government. Rather, he argues that the Motion should be treated as a "Motion in Limine" and addressed at the time of trial. Clearly, if the Government's proof fails on any of these counts, the Defendant can move for acquittal after the presentation of evidence pursuant to Rule 29, Fed. R. Crim. P.

Conclusion

Based upon the foregoing, I recommend that the Court **DENY** the Motion to Dismiss.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

Dated: December 12, 2000

Margaret J. Kravchuk
U.S. Magistrate Judge

U.S. District Court
District of Maine (Bangor)

CRIMINAL DOCKET FOR CASE #: 00-CR-26-ALL

USA v. VIOLETTE

Filed:

05/17/00

Dkt# in other court: None

Case Assigned to: Judge GEORGE Z. SINGAL

GREGORY P VIOLETTE (1)

aka

GREGORY PAUL VIOLETTE

aka

GREGORY VIOLETTE

aka

G VIOLETTE

aka

G P VIOLETTE

aka

PAUL G VIOLETTE

aka

PAUL E VIOLETTE

aka

PAUL GREGORY VIOLETTE

aka

P G VIOLETTE

aka

P G VIOLETTE

defendant

JOSEPH BALDACCI, ESQ.

[COR LD NTC ret]

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BANGOR, ME 04402

(207) 945-3333

Pending Counts:

Disposition

18:1343.F FRAUD BY WIRE, RADIO,
OR TELEVISION (18:1343 & 2)
(1ss - 2ss)

18:1341.F FRAUDS AND SWINDLES
(Mail Fraud 18:1341 & 2)
(3ss - 5ss)

18:1014.F LOAN AND CREDIT
APPLICATIONS GENERALLY (False
Statements to a Financial
Institution 18:1014 & 2)
(6ss - 13ss)

18:1341.F FRAUDS AND SWINDLES
(Mail Fraud 18:1341 & 2)
(14ss - 15ss)

18:1014.F LOAN AND CREDIT
APPLICATIONS GENERALLY (False
Statements to a Financial
Institution 18:1014 & 2)

(16ss)

18:1341.F FRAUDS AND SWINDLES
(Mail Fraud 18:1341 & 2)
(17ss - 22ss)

18:1014.F LOAN AND CREDIT
APPLICATIONS GENERALLY (False
Statements to a Financial
Institution18:1014 & 2)
(23ss - 26ss)

18:1341.F FRAUDS AND SWINDLES
(Mail Fraud 18:1341 & 2)
(27ss - 28ss)

18:1014.F LOAN AND CREDIT
APPLICATIONS GENERALLY (False
Statements to a Financial
Institution18:1014 & 2)
(29ss)

18:1341.F FRAUDS AND SWINDLES
(Mail Fraud 18:1341 & 2)
(30ss)

18:1014.F LOAN AND CREDIT
APPLICATIONS GENERALLY (False
Statements to a Financial
Institution18:1014 & 2)
(31ss)

18:1341.F FRAUDS AND SWINDLES
(Mail Fraud 18:1341 & 2)
(32ss - 35ss)

18:1014.F LOAN AND CREDIT
APPLICATIONS GENERALLY (False
Statements to a Financial
Institution18:1014 & 2)
(36ss - 44ss)

18:1341.F FRAUDS AND SWINDLES
(Mail Fraud 18:1341 & 2)
(45ss - 51ss)

18:152.F CONCEAL ASSETS, FALSE
OATH AND CLAIMS BRIBERY
(Bankruptcy Fraud)
(52ss - 54ss)

18:1014.F LOAN AND CREDIT
APPLICATIONS GENERALLY (False
Statements to a Financial
Institution18:1014 & 2)
(55ss)

18:1341.F FRAUDS AND SWINDLES
(Mail Fraud 18:1341 & 2)
(56ss - 61ss)

18:1014.F LOAN AND CREDIT
APPLICATIONS GENERALLY (False
Statements to a Financial
Institution18:1014 & 2)
(62ss)

18:1341.F FRAUDS AND SWINDLES
(Mail Fraud 18:1341 & 2)
(63ss - 65ss)

18:1014.F LOAN AND CREDIT
APPLICATIONS GENERALLY (False
Statements to a Financial
Institution18:1014 & 2)
(66ss - 67ss)

18:1956-3100.F MONEY
LAUNDERING - LARCENY AND THEFT,
BANK (18:1956(a)(1)(A)(i) &
2)
(68ss - 69ss)

18:1014.F LOAN AND CREDIT
APPLICATIONS GENERALLY (False
Statements to a Financial
Institution18:1014 & 2)
(70ss)

18:1341.F FRAUDS AND SWINDLES
(Mail Fraud 18:1341 & 2)
(71ss - 72ss)

18:1956-3100.F MONEY
LAUNDERING - LARCENY AND THEFT,
BANK (18:1956(a)(1)(A)(i) &
2)
(73ss)

18:1957-7450.F RACKETEERING -
LIQUOR (Money Laundering in
violation of 18:1957 & 2)
(74ss - 75ss)

18:1014.F LOAN AND CREDIT
APPLICATIONS GENERALLY (False
Statements to a Financial
Institution18:1014 & 2)
(76ss)

18:1341.F FRAUDS AND SWINDLES
(Mail Fraud 18:1341 & 2)
(77ss)

18:1343.F FRAUD BY WIRE, RADIO,
OR TELEVISION (18:1343 & 2)
(78ss)

18:1341.F FRAUDS AND SWINDLES
(Mail Fraud 18:1341 & 2)
(79ss)

18:1014.F LOAN AND CREDIT
APPLICATIONS GENERALLY (False
Statements to a Financial
Institution18:1014 & 2)
(80ss)

18:1341.F FRAUDS AND SWINDLES
(Mail Fraud 18:1341 & 2)
(81ss)

18:1956-3100.F MONEY
LAUNDERING - LARCENY AND THEFT,
BANK (18:1956(a)(1)(A)(i) &
2)
(82ss)

18:1014.F LOAN AND CREDIT
APPLICATIONS GENERALLY (False
Statements to a Financial
Institution18:1014 & 2)
(83ss)

18:1341.F FRAUDS AND SWINDLES
(Mail Fraud 18:1341 & 2)
(84ss)

18:1014.F LOAN AND CREDIT
APPLICATIONS GENERALLY (False
Statements to a Financial
Institution18:1014 & 2)
(85ss)

18:1341.F FRAUDS AND SWINDLES
(Mail Fraud 18:1341 & 2)
(86ss - 87ss)

18:1343.F FRAUD BY WIRE, RADIO,
OR TELEVISION (18:1343 & 2)
(88ss)

18:1341.F FRAUDS AND SWINDLES
(Mail Fraud 18:1341 & 2)
(89ss - 90ss)

Offense Level (opening): 4

Terminated Counts:

Disposition

18:152.F BANKRUPTCY FRAUD
(1 - 3)

18:1343.F FRAUD BY WIRE, RADIO,
OR TELEVISION (18:1343 &2)
(1s - 2s)

18:1341.F FRAUDS AND SWINDLES
(Mail Fraud in violation of
18:1341 & 2)
(3s - 5s)

18:1014.F LOAN AND CREDIT
APPLICATIONS GENERALLY (False
Statements to a Financial
Institution in violation of
8:1014 & 2)
(6s - 13s)

18:1341.F FRAUDS AND SWINDLES
(Mail Fraud in violation of
18:1341 & 2)
(14s - 15s)

18:1014.F LOAN AND CREDIT
APPLICATIONS GENERALLY (False
Statements to a Financial
Institution in violation of
8:1014 & 2)
(16s)

18:1341.F FRAUDS AND SWINDLES
(Mail Fraud in violation of
18:1341 & 2)
(17s - 22s)

18:1014.F LOAN AND CREDIT
APPLICATIONS GENERALLY (False
Statements to a Financial
Institution in violation of
8:1014 & 2)
(23s - 26s)

18:1341.F FRAUDS AND SWINDLES
(Mail Fraud in violation of
18:1341 & 2)
(27s - 28s)

18:1014.F LOAN AND CREDIT
APPLICATIONS GENERALLY (False
Statements to a Financial
Institution in violation of
8:1014 & 2)
(29s)

18:1341.F FRAUDS AND SWINDLES

(Mail Fraud in violation of
18:1341 & 2)
(30s)

18:1014.F LOAN AND CREDIT
APPLICATIONS GENERALLY (False
Statements to a Financial
Institution in violation of
8:1014 & 2)
(31s)

18:1341.F FRAUDS AND SWINDLES
(Mail Fraud in violation of
18:1341 & 2)
(32s - 35s)

18:1014.F LOAN AND CREDIT
APPLICATIONS GENERALLY (False
Statements to a Financial
Institution in violation of
8:1014 & 2)
(36s - 44s)

18:1341.F FRAUDS AND SWINDLES
(Mail Fraud in violation of
18:1341 & 2)
(45s - 51s)

18:152.F CONCEAL ASSETS, FALSE
OATH AND CLAIMS BRIBERY
(Bankruptcy Fraud in violation
of 18:152)
(52s - 54s)

18:1014.F LOAN AND CREDIT
APPLICATIONS GENERALLY (False
Statements to a Financial
Institution in violation of
8:1014 & 2)
(55s)

18:1341.F FRAUDS AND SWINDLES
(Mail Fraud in violation of
18:1341 & 2)
(56s - 61s)

18:1014.F LOAN AND CREDIT
APPLICATIONS GENERALLY (False
Statements to a Financial
Institution in violation of
8:1014 & 2)
(62s)

18:1341.F FRAUDS AND SWINDLES
(Mail Fraud in violation of
18:1341 & 2)
(63s - 65s)

18:1014.F LOAN AND CREDIT
APPLICATIONS GENERALLY (False
Statements to a Financial
Institution in violation of
8:1014 & 2)
(66s - 67s)

18:1956-3100.F MONEY
LAUNDERING - LARCENY AND THEFT,
BANK (Money Laundering in
violation of
18:1956(a)(1)(A)(i) and 2)
(68s - 69s)

18:1014.F LOAN AND CREDIT
APPLICATIONS GENERALLY (False
Statements to a Financial
Institution in violation of
8:1014 & 2)
(70s)

18:1341.F FRAUDS AND SWINDLES
(Mail Fraud in violation of
18:1341 & 2)
(71s - 72s)

18:1956-3100.F MONEY
LAUNDERING - LARCENY AND THEFT,
BANK (Money Laundering in
violation of
18:1956(a)(1)(A)(i) and 2)
(73s)

18:1957-9992.F ENGAGING IN
MONETARY TRANSACTIONS (Money
Laundering in violation of
18:1957 & 2)
(74s - 75s)

18:1014.F LOAN AND CREDIT
APPLICATIONS GENERALLY (False
Statements to a Financial
Institution in violation of
8:1014 & 2)
(76s)

18:1341.F FRAUDS AND SWINDLES
(Mail Fraud in violation of
18:1341 & 2)
(77s)

18:1343.F FRAUD BY WIRE, RADIO,
OR TELEVISION (18:1343 &2)
(78s)

18:1341.F FRAUDS AND SWINDLES

(Mail Fraud in violation of
18:1341 & 2)
(79s)

18:1014.F LOAN AND CREDIT
APPLICATIONS GENERALLY (False
Statements to a Financial
Institution in violation of
8:1014 & 2)
(80s)

18:1341.F FRAUDS AND SWINDLES
(Mail Fraud in violation of
18:1341 & 2)
(81s)

18:1956-3100.F MONEY
LAUNDERING - LARCENY AND THEFT,
BANK (Money Laundering in
violation of
18:1956(a)(1)(A)(i) and 2)
(82s)

18:1014.F LOAN AND CREDIT
APPLICATIONS GENERALLY (False
Statements to a Financial
Institution in violation of
8:1014 & 2)
(83s)

18:1341.F FRAUDS AND SWINDLES
(Mail Fraud in violation of
18:1341 & 2)
(84s)

18:1014.F LOAN AND CREDIT
APPLICATIONS GENERALLY (False
Statements to a Financial
Institution in violation of
8:1014 & 2)
(85s)

18:1341.F FRAUDS AND SWINDLES
(Mail Fraud in violation of
18:1341 & 2)
(86s - 87s)

18:1343.F FRAUD BY WIRE, RADIO,
OR TELEVISION (18:1343 &2)
(88s)

18:1341.F FRAUDS AND SWINDLES
(Mail Fraud in violation of
18:1341 & 2)
(89s - 90s)

Offense Level (disposition): 4

Complaints:

NONE

U. S. Attorneys:

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